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Personal information

STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Personal information

DECISION

Case #: MGE - 202884

PRELIMINARY RECITALS

Pursuant to a petition filed on August 11, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the St. Croix County Health & Human Services regarding Medical Assistance (MA), a hearing was held on September 23, 2021, by telephone.

The issue for determination is whether the petitioner has shown that he meets program asset limit for Community Waivers/Family Care.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Personal information

Petitioner's Representative:

Personal information
[REDACTED]
[REDACTED]
Personal information

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Personal information

St. Croix County Health & Human Services
1752 Dorset Lane
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [Personal information]) is a resident of St. Croix County. He was married to Mary Thompson.
 2. On April 2, 2021, the ADRC of St. Croix County found petitioner functionally eligible for Community Waivers/Family Care at a nursing home level of care. Petitioner Exhibit F.
 3. Petitioner and his wife individually or jointly owned a 1997 [Personal information] motorcycle, 2012 [Personal information], and a 2018 [Personal information]. The motorcycle was sold for \$1,000.00 on May 20, 2021. Petitioner Exhibit N.
 4. The agency used the NADA Guide to value all three vehicles. The motorcycle was valued at \$1,260 (Fair Condition) and the [Personal information] at \$8,150.00 (Rough Trade-In). Agency Exhibits C and E. The 2018 [Personal information] was valued at \$15,150.00. The equity value was deemed to be \$3,150.00 as \$12,000.00 was still owed on the vehicle. Agency Exhibit D.
 5. On June 3, 2021, petitioner submitted an application for Community Waivers/Family Care while residing in a community-based residential facility (CBRF). The non-exempt assets identified by petitioner totaled \$115,214.66, which consisted of the following:
 - [Personal information] Checking (Joint): \$16,960.55
 - [Personal information] Savings (Joint): \$252.88
 - [Personal information] (Institutionalized Spouse): \$76,808.20
 - [Personal information] 403b (Institutionalized Spouse): \$7,454.03
 - 2012 [Personal information]: \$13,739.00.
- Petitioner Exhibit H.
6. On July 8, 2021, petitioner passed away.
 7. On July 13, 2021, the agency issued a notice that indicated petitioner was subject to a divestment penalty. Petitioner Exhibit D. The agency later found that the asset transfers at issue were not subject to a penalty.
 8. On July 21, 2021 the agency sent notice that the application for Community Waivers/Family Care was denied due to petitioner being over asset limit. Petitioner Exhibit J.
 9. The agency found that total combined countable assets for petitioner and his spouse were valued at \$100,519.21 as of the finding of functional eligibility on April 2, 2021. The agency also found the community spouse asset share (CSAS) was \$50,259.61 and that the program asset limit was \$52,259.61. Petitioner Exhibit I and Agency Exhibit K. The total combined countable assets was determined by the agency to consist of \$4,410.00 in vehicle assets and \$96,109.21 in liquid assets. Agency Exhibit K. The total vehicle assets of \$4,410.00 was based on \$1,260.00 for the Harley motorcycle and \$3,150.00 for the [Personal information].
 10. The agency found that petitioner's total countable assets was \$53,340.79 as of July 20, 2021. This was based on \$48,930.79 in liquid assets and \$4,410.00 in vehicle assets, consisting of the Harley motorcycle and [Personal information].
 11. On August 11, 2021, petitioner appealed.
 12. At hearing, counsel asserted that the total countable assets for petitioner and his spouse as of April 2, 2021 was \$112,775.66. The non-exempt countable assets were as follows:
 - [Personal information] Checking (Joint): \$16,960.55
 - [Personal information] Savings (Joint): \$252.88
 - [Personal information] (Institutionalized Spouse): \$76,808.20

- **Personal info...** 403(b) (Institutionalized Spouse): \$7,454.03
- 2018 **Personal i...** (Joint): \$3,150.00
- 2012 **Personal information** (Joint): \$8,150.00

See also, written submission by counsel.

DISCUSSION

Medicaid rules include various provisions intended to guard against the impoverishment of the “community spouses” of Medicaid recipients who reside in nursing homes as well as the spouses of individuals enrolled in Medicaid home and community based long term care waiver programs (e.g., Family Care, IRIS). See Wis. Stat. §49.455; Wis. Admin. Code §DHS 103.075, 42 U.S.C. §1396r-5; and *Medicaid Eligibility Manual (MEH)* §§18, *et.al.* To become eligible for Institutional Medicaid or a home and community-based long term care waiver program (hereafter, “community waivers”), an *unmarried* individual may not own countable, available assets in excess of \$2,000. *MEH* §§27.5.1, 27.5.2, 27.7, and 39.4.1. In contrast, married applicants may initially qualify for Institutional Medicaid or community waivers while owning a higher amount of countable assets. See Wis. Stat. §49.455(6) and *MEH* §18.4.6.1.

The amount of assets a community spouse is allowed to retain in excess of the \$2,000 asset limit is referred to as the “community spouse resource allowance” (state Medicaid policy uses the term “community spouse asset share”). See Wis. Stat. §49.455(6) and *MEH* §18.4.3. The community spouse assets share (CSAS) is dependent upon the total amount of countable assets the applicant and his or her spouse own as of the beginning of the first continuous period of institutionalization of 30 days or more or the date the person was found functionally eligible for community waivers. *MEH* §18.4.2 and Wis. Admin. Code §DHS 103.075(4)(b). A couple who owns \$100,000 or less will have a CSAS of \$50,000; a couple who owns more than \$100,000 but less than \$260,760 will have a CSAS equal to 1/2 of their total countable assets; and a couple who owns \$260,760 or more will have a CSAS of \$130,380. *Id.* If a married applicant owns countable assets in excess of \$2,000 plus the assigned CSAS, s/he will be found ineligible by the agency.

An institutionalized spouse or the community spouse may request that an agency complete an assessment of the couple's assets prior to filing an application. When the agency receives this type of request, the agency will calculate the couple's total countable assets which is commonly referred to as an “asset assessment”. The agency will also determine the amount of assets the community spouse will be able to retain while still attaining eligibility for the institutionalized spouse i.e., the community spouse resource allowance / community spouse asset share.

The issue in dispute at hearing was whether petitioner's assets exceeded program limits for Community Waivers/Family Care. Petitioner bears the burden to demonstrate that his assets did not exceed those limits.

The Medicaid Eligibility Handbook (MEH) provides the following guidance, in relevant part:

18.4.1 Spousal Impoverishment Assets Introduction

Count the *combined assets* of the institutionalized person and his or her *community spouse*. (Note: *Disregard* prenuptial agreements. They have no effect on *spousal impoverishment* determinations.) Add together all countable, available assets (see [Section 16.1 Assets Introduction](#)) the couple owns.

Do not count the following assets:

- Homestead property. If the institutionalized person and the community spouse each own home property and meet the criteria in [Section 16.8.1.3 Exempt Home Property](#), exempt the institutionalized person's home but not the community spouse's home.

Example 1: One spouse is in a nursing home, the other lives in the community. They have lived apart for 10 years. The institutionalized person owns a home and intends to return. The community spouse owns a different home. The home that each spouse owns is the principal residence of that spouse. The institutionalized person's home is an exempt asset. The community spouse's home is not exempt.

If they both own homes and the institutionalized person's home is not exempt, count the institutionalized person's home but exempt the spouse's home. Both homes cannot be exempt simultaneously.

- One vehicle, regardless of value or purpose. If the AG has more than one vehicle, completely disregard the vehicle with the highest equity value, regardless of purpose. Then, for the remaining vehicles, follow the EBD rules for vehicles (see [Section 16.7.9 Vehicles \[Automobiles\]](#)).
Note: Do not allow additional vehicles to be exempted under [Section 16.7.9](#), unless they meet the definition to exempt under the provisions for property essential to self-support, plan to achieve self-support or temporarily inoperable as outlined in the section.

Example: Howard is applying for benefits. Howard is in an institution and Marianne is his community spouse. They own a boat with an equity value of \$10,000 and an automobile with an equity value of \$7,000. Because the boat has a higher equity value, it is disregarded. The automobile does not meet the criteria for exemption and so is a counted asset; count \$7,000 in the asset assessment and the asset determination.

...

- Household goods and personal items, regardless of their value.
- All assets not counted in determining EBD Medicaid eligibility.
- IRA and work-related retirement benefit plans or individually-owned retirement accounts, such as IRAs or Keoghs of an ineligible community spouse (see [Section 16.7.20 Retirement Benefits](#)).

MEH, 18.4.1 (*emphasis added*).

I would note that counsel submitted multiple requests to the agency seeking to ascertain the assets and values used to reach the total countable asset total of \$100,519.21. The agency did not comply with those requests. The record at hearing also does not clearly indicate how the agency determined that amount. What the record indicates is that the amount was comprised of \$96,109.21 in liquid assets and \$4,410.00

in vehicle assets. The vehicle assets consisted of \$1,260.00 for the Harley motorcycle and \$3,150.00 for the [Personal i...]. See, Finding of Fact 9. The agency exempted the [Personal ...] from the asset calculation under MEH, 18.4.1.

The agency found that petitioner's total countable assets decreased to \$53,340.79 as of July 20, 2021. While the record is not clear on this point, it appears that petitioner and his spouse transferred or otherwise permissibly disposed of assets some point after submitting his Community Waivers/Family Care application. The only evidence in the record as to the timing and amount of those transfers is that on July 20, 2021 the agency re-assessed petitioner's total countable assets, finding it amounted to \$53,340.79. The agency indicated that amount was comprised of \$4,410.00 in vehicle assets and \$48,930.79 liquid assets. The vehicle assets consisted of \$1,260.00 for the Harley motorcycle and \$3,500.00 for the [Personal i... information]. Per MEH, 18.4.1, the agency did not include one of petitioner's vehicles in the asset calculation, which was a 2012 [Personal informati...] valued at \$8,150.00. Petitioner did not provide any evidence as to timing or amount of the asset transfers, and did not otherwise dispute the agency's finding that as of July 20, 2021 his total countable assets equaled \$53,340.79. Again, that amount was based on liquid assets of \$48,930.79 and vehicle assets comprised of the Harley motorcycle and [Personal i... information].

Counsel's first argument was that the agency should not have included the Harley motorcycle in the asset assessment as it was sold prior to the Community Waivers/Family Care application being submitted. Proof was provided that the motorcycle was sold after the functional eligibility screen but before the submission of the application. See, Petitioner Exhibit N. The agency's position is that pursuant to MEH 18.4.2, the asset assessment is completed at the earlier of the "beginning of the person's first continuous period of institutionalization of 30 days or more" and the "date the person was determined functionally eligible for HCBWs." Counsel argued that the asset assessment should be done at time of application, which would exclude the motorcycle as it had been sold by that point.

Even if counsel is correct, I agree with the agency that the motorcycle would be removed from the calculations for the total countable asset (\$100,519.21), CSAS, and the agency's determination of petitioner's total assets as of July 20, 2021. The total countable assets would be reduced from \$100,519.21 to \$99,259.21 (\$100,519.21 - \$1,260.00). The CSAS would then be reduced from \$50,259.61 to \$50,000.00. See, MEH, 18.4.3. The program asset limit would then be reduced from \$52,259.61 to \$52,000.00 (CSAS plus \$2,000.00). See, MEH, 18.5.3. As of July 20, 2021, the agency found petitioner's total countable assets were \$53,340.79, which included the motorcycle. If the value of the motorcycle were removed, his total countable assets as of July 20, 2021 would decrease by \$1,260.00 to \$52,080.79. This amount exceeds the program limit of \$52,000.00. As such, petitioner would be over asset limit.

Counsel next argued that the agency erred by using the National Automobile Dealers Association (NADA) Guide to value the vehicles instead of the Kelly BlueBook. The MEH provides the following in determining the equity value of a vehicle:

16.7.9.1 Determining Equity Value

Equity value is:

- The vehicle's wholesale value as given in a standard guide on motor vehicle values (blue book) or the value as estimated by a sales representative at a local dealership.
- Minus any encumbrances (loans or mortgages) that are recorded on the vehicle's title as liens.

Do not increase a vehicle's value by adding the value of low mileage or other factors, such as optional equipment or apparatus for the handicapped.

MEH, 16.7.9.1.

Counsel's argument is based on the fact "blue book" is listed in the above provision. However, my review of that provision in whole indicates that the insertion of "blue book" was merely meant to be illustrative of the type of "standard guide on motor vehicle value" that may be used, and not an indication it was the sole vehicle valuation guide that may be relied on by the agency. There was no evidence presented that the NADA Guide used by the agency was not a "standard guide on motor vehicle values." Moreover, it was not shown that the use of the blue book instead of the NADA value would change petitioner's financial eligibility.

Counsel next noted that the agency sent petitioner a notice on July 13, 2021, that indicated he was subject to a divestment penalty. See, Finding of Fact 7. The agency later determined that no penalty would be applied. Counsel argued that pursuant to MEH 17.3.3, a person cannot be subject to a penalty period unless they meet all MA financial and nonfinancial eligibility requirements. It was argued that since the penalty notice was issued, the agency had to have found petitioner met all financial eligibility requirements. In essence, it was argued that the issuance of the July 13, 2021 notice bestowed petitioner with MA eligibility. Under such a position an erroneously issued notice would bestow eligibility even though the applicant does not meet clearly established criteria. Counsel pointed to no authority that supports such a position. I did not find the argument persuasive.

Petitioner next disputed the agency's calculation as to his total countable assets as of the date of functional eligibility on April 2, 2021. He argued it was \$112,775.66, not the \$100,519.21 used by the agency. See, Finding of Fact 12. Petitioner provided evidence that supported the assets claimed and valuation of those assets. See, Petitioner Exhibit H (for liquid assets) and Agency Exhibit C, D, and E (for vehicle assets). I would note that in petitioner's valuation he does not include the Harley motorcycle, which I understood was the result of electing it to be his one exempt vehicle. Using total countable assets of \$112,775.66, the CSAS would be \$56,387.83 ($\$112,775.66 \times \frac{1}{2}$), and petitioner's program asset limit would be \$58,387.83 (CSAS plus \$2,000.00). MEH 18.4.4. Counsel argued that petitioner would meet asset limits as the agency's finding of total countable assets as of July 20, 2021 of \$53,340.79 was less than his program asset limit of \$58,387.83.

The problem with counsel's argument is that the agency's finding of total countable assets of \$53,340.79 as of July 20, 2021 was based on vehicle assets of \$4,410.00. The vehicle assets were comprised of \$1,260.00 for the Harley motorcycle and \$3,150.00 for the [Personal information]. The agency exempted the [Personal information] from the asset calculation as it had the most equity value. Counsel's \$112,775.66 valuation however exempted the Harley motorcycle and included the [Personal information] and [Personal information] as countable assets. If those were the two vehicles used as countable assets, the agency's finding of total countable assets as of July 20, 2021 would change. The total vehicle asset value would increase from \$4,410.00 (Harley motorcycle and [Personal information]) to \$11,300.00 ([Personal information] and [Personal information]). The total countable assets as of July 20, 2021 would then increase from \$53,340.79 (\$4,410.00 vehicle assets + \$48,930.79 liquid assets) to \$60,230.79 (\$11,300.00 vehicle assets + \$48,930.79 liquid assets). Petitioner's countable assets (\$60,230.79) would exceed the program limit of \$58,387.83.

Finally, I would note that counsel was seeking Family Care benefits from June 3, 2021 (the date of application) until July 8, 2021 (the date of petitioner's death). Family Care benefits do not start on the date of application. Instead, benefits for Family Care start after the individual is enrolled in a managed care organization (MCO). See, Wis. Stats. § 46.286 and Wis. Admin. Code § DHS 10.41(1).

Based on the evidence in the record, I find that petitioner has not met his burden to prove he met program asset limits for Community Waivers/Family Care.

CONCLUSIONS OF LAW

Petitioner failed to meet his burden to demonstrate he met program asset limits for Community Waivers/Family Care.

THEREFORE, it is

ORDERED

That petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

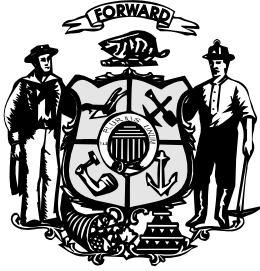
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of November, 2021


/s

Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 2, 2021.

St. Croix County Health & Human Services
Division of Health Care Access and Accountability

Personal information